IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.984 OF 2007.

Trimbak Sadashiv Pawar & Ors ...Appellants

Versus

Jagannath Bhima Gangan & Ors ...Respondents

Shri Vijay Mane for the Appellants.

Shri Sundeep Kurne i/by Shri Umesh Mankapure for the Respondents.

CORAM : ABHAY S.OKA, J.
DATED : 17th December, 2007.

P.C.:

1. Heard advocate appearing for the appellants. The suit for removal of encroachment filed by the respondents-plaintiffs was decreed by the trial Court and the decree has been confirmed by the District Court in an appeal preferred by the appellants.

2. The submission of the appellants is that the Courts below could not have relied upon the survey map prepared by the survey officer in as much as there were inherent defects in the said plan and decree for removal of encroachment could not have been passed on the basis of the said plan.

3. I have carefully considered the submissions. It must be stated here that the appellants had raised a

plea in the trial Court that they have perfected their title to the alleged encroached portion by adverse possession. Points for determination framed by the Appellate court show that plea of adverse possession was canvassed in the Appellate Court. There are concurrent findings of fact recorded by the Courts below by holding that the appellants have failed to establish their hostile possession. The said findings are based on appreciation of oral and documentary evidence on record. Once plea of adverse possession of the appellants is negatived by the Courts below, no fault can be found in the decree for removal of encroachment passed by the trial Court and confirmed by the District Court. No substantial question of law arises in the Second Appeal. Accordingly, Second Appeal is dismissed with no orders as to costs.

JUDGE